



MEMORANDUM

TO: Trinidad Planning Commission

FROM: Trever Parker, City Planner

DATE: June 14, 2006

RE: Planning Commission Policy Determination: Doran Accessory Dwelling Unit

This project has come about as the result of an application for an addition to the main residence at 540 / 542 Edwards Street, which has stood unoccupied for approximately 20 years. The property is currently in escrow. The buyers of the property submitted an application for Design Review on May 2, 2006. In reviewing the application, it was noted that an accessory dwelling unit (ADU) (previously called second units) is located on the property. The buyers indicated that they were purchasing the property under the assumption that there are two units, one of which could be rented out in order to help cover the costs of the purchase. Staff informed the applicant / buyer that the ADU may not be allowable and that they would probably have to wait until after the City officially addresses ADUs prior to reestablishing that use on the lot.

The current owner (Tim Doran) agreed to extend the escrow and take the lead on establishing the validity of the ADU. Mr. Doran submitted an application for "Other" on June 12, 2006. Staff determined that the most appropriate action would be a "Planning Commission Policy Determination" on this issue as the Zoning Ordinance is not entirely clear. The only other option would have been to apply for a Variance, which is very difficult for staff to recommend approval.

The original ADU on the property was converted from a garage in the late 1960's or early 1970's. The City's current Zoning Ordinance was certified in 1980 and, although ADUs are not specifically addressed, it requires 8,000 sq. ft. of lot area per dwelling unit. The lot in question is 8,680 sq. ft. so that under current standards an ADU would not be allowable. However, the Zoning Ordinance §17.64.010 provides that: *"The lawful use of lands or structures existing on the effective date of the regulations codified in the title, although such use or structure does not conform to the regulations applied to such property or structure, may be continued except as provided..."* Mr. Doran purchased the property in 1984. Subsection A, under the Section noted above allows nonconforming structures to be *"altered, repaired, or extended provided that [it does not] increase the existing degree of nonconformity."* Under this provision, Mr. Doran applied for, and received, permits from the City to remodel the ADU in 1985; he also upgraded the septic system at that time. Although the building received a final inspection, due to extenuating circumstances, it was not utilized and remains today as it has been since that time. At the crux of the issue is another Zoning Ordinance provision for nonconforming uses (§17.64.010.C), which states that *"a nonconforming use which has been discontinued for a*

period of one year or more shall not be reestablished.” Staff recommends that, based on file information and information submitted by the applicant, the use of the ADU on this property be allowed to continue based on the facts below and asks for either the Planning Commission’s concurrence or disapproval if you do not agree with staff’s analysis.

There are two main findings that staff has used in making the recommendation that the use be allowed to continue. The first is that the ADU is appropriate for this property and will not be detrimental to public health and safety, the environment or community character. Second, the intent of the use of the ADU was never abandoned and to strictly enforce §17.64.010.C would deprive the property owner of rights enjoyed by others and would not meet the intent of the City’s Zoning Ordinance or General Plan. The basis for these determinations is detailed below:

The ADU is appropriate for this property and will not be detrimental to public health and safety, the environment or community character:

1. The file information proves that this ADU was a legal, nonconforming structure that was converted prior to the existing Zoning Ordinance provisions.
2. The file information also shows that the property owner applied for, and was granted unconditional Design Review approval for the remodel of the ADU on Sept. 18, 1985.
3. It is also documented that the structure received proper building permits and had its final inspection / approvals on Sept. 5, 1987
4. Further, during the Design Review approval process, Mr. Doran actually decreased the nonconformity of the existing ADU by decreasing its square footage from 671 sq. ft. to 513 sq. ft. and the building footprint from 861 sq. ft. (including a carport) to 603 sq. ft. Also, the rear property line setback was increased from 2’-6” to 5’. (Note that a previous proposal was denied due to an increase in the square footage of the nonconforming structure.)
5. In conjunction with the remodel, Mr. Doran also installed a new septic system designed with a 3-bedroom capacity consistent with current Health Department Regulations (adopted in 1984). Although current Health Department policy would have required a 4-bedroom system (because the minimum size allowed per unit is 2-bedrooms), the main residence is 2-bedrooms and the ADU is 1-bedroom. There are only 3-bedrooms on the property, so the septic system is appropriately sized.
6. The City is currently in the process of adopting an OWTS ordinance that will require monitoring and maintenance of all septic systems, further protecting the property from potential public health and environmental hazards. Septic systems for second units are proposed to be more strictly regulated and their level of use can be limited through monitoring water consumption and / or other mechanisms.
7. The City Council has just approved a Planning Commission recommendation to draft new ADU regulations which should restrict inappropriate use of ADUs while allowing their use when public safety, environmental health and community character are adequately protected.
8. The property is located in a high traffic area of town with the Trinidad Bed and Breakfast adjacent to it and a large residence on the other side. There is ample room for parking for both residences on the property. Impacts such as parking, lighting, crowding, etc. were addressed during the Design Review process in 1985. There is no evidence that the second unit would be detrimental to the neighborhood or those living, working or visiting nearby.

The intent of the use of the ADU was never abandoned and to strictly enforce §17.64.010.C would deprive the property owner of rights enjoyed by others and would not meet the intent of the City's Zoning Ordinance or General Plan:

1. Mr. Doran began the process of remodeling the ADU immediately upon purchase of the property and fully intended to utilize both units on the property. However, the remodeled ADU was not used, and has remained in suspension since completed in 1986.*
2. Soon after the remodel was completed, a series of family tragedies prevented Mr. Doran from following through with his plans. This situation is one that many long-time residents in town are aware of, supporting the fact that Mr. Doran has not 'abandoned' the project.*
3. In addition to the family tragedies, Mr. Doran has had health problems and has been under the care of a physician for the past 9 years. These health issues have made it difficult for him to follow-through with managing his rental property. However, until now, he has maintained his intent to rent both units on the property once able to do so.*
4. Mr. Doran finally decided that he would not be able to manage the property, and has therefore sold it as two units.*
5. The applicant has a documented history of complying with City regulations, even requesting the City to better enforce its ordinances, and was led to believe that he had done everything necessary to protect his property interests.*
6. There is some precedence for considering the intent of the use, rather than actual active use of a nonconforming structure. During 2001-2003 hearings on applications for the demolition and reconstruction of a nonconforming ADU, it was brought up that it had been vacant for a few years. It was argued that the intent to use the structure had not been abandoned, and that the applicant had been in the planning and permitting stage for that period of time.
7. For the project noted above (#s 2001-02 and 2003-04), the applicant (Mickey Fleschner) received approval to demolish a 1-story apartment garage structure and rebuild it with 2-stories as long as there was no increase in the residential square footage. The property was in a similar situation with a legal nonconforming ADU on the lot and a recently upgraded septic system. However, this lot did not meet the 8,000 sq. ft. minimum lot size and the leachfield had actually failed, requiring the replacement. Staff feels that the above decision was no more detrimental to the community than approval of this determination and required a similar interpretation of the Zoning Ordinance provisions regulating nonconforming uses.
8. Zoning Ordinance section 17.64.010 discusses both nonconforming uses and nonconforming structures separately. Subsection C, which contains the one year restriction only mentions uses. The structure itself is nonconforming as to setbacks and density limitations. However, the Zoning Ordinance would not require the structure to be torn down. Further, the Zoning Ordinance allows repair, maintenance and even additions to nonconforming structures. This indicates that the intent was not necessarily to eliminate nonconforming structures, but to eliminate nonconforming uses that are not compatible with uses allowed by the Zoning Ordinance.
9. The "newly" remodeled building would become a burden to the property owner if it can not be utilized and could become a detriment to the City if allowed to fall into disrepair through lack of maintenance.

10. As noted in the memo to the City Council outlining the reasons for the Planning Commission recommendation for the City to address ADUs, the entire Zoning Ordinance is lacking clear regulation of second units. They are not defined or specifically addressed at all, other than the density limitation of one dwelling unit per 8,000 sq. ft. of lot area, which may not be consistent with current State law.
11. The emphasis of the Trinidad General Plan and Zoning Ordinance is on single-family dwellings with densities limited to reduce the need for public services and due to sewage disposal limitation. This ADU meets the definition of a single-family residence, just not the City density requirements. Since the ADU is already connected to utilities and was already being served by City services at one point, and because the septic system is adequate for the level of use, it appears to meet the intent of the City's land use regulations.

* Indicates information / justification supplied by the applicant.

If the Planning Commission agrees with the above analysis and staff's recommendation, a motion should be made similar to the following: Based on information contained in this memo, information submitted by the applicant and upon City ordinances, I move to adopt the information and findings contained in this memo and acknowledge the continued (not abandoned) use of the ADU located at 542 Edwards Street.

If the Planning Commission does not agree with staff's analysis, or if additional information is presented at the hearing that shows that the findings should not be made, a motion should be made similar to the following: Based on information submitted at the hearing, and based on City ordinances, I move that the ADU is not in conformance with the Zoning Ordinance and that the necessary findings can not be made. The use of the ADU at 542 Edwards Street was discontinued for more than a year shall be reestablished until such time as new regulations are adopted that would permit consistent with City regulations.

Attachments:

- Doran approved 1986 Design Review Plans / Notice of Action
- Septic system permit
- ADU memo to City Council